



Republic of the Philippines
Civil Service Commission
 Constitution Hills, Batasang Pambansa Complex, Diliman 1126 Quezon City

109 Years of Service;
 Civil Service at Its Best

Mamamayan Muna

DESEO, Julieta A.
 Re: Payment of Back Salaries;
 Illegal Reassignment
 (Complaint)

Number: 100041

Promulgated: 07 SEP 2010

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This is a
MUST - READ
DECISION
 CSC Decision No. 10-0041 dated Sept. 7, 2010
 CSLO

DECISION

Julieta A. Deseo, Assistant District Engineer, Quezon 2nd District Engineering Office, Department of Public Works and Highways (DPWH), has written the Commission setting forth her claim for the payment of back salaries and other pecuniary benefits predicated on the following:

x x x

"Nearly three (3) years ago—and after more than two (2) years from my unconsented reassignment—the Honorable Commission sustained my appeal for redress by issuing CSC Resolution No. 06-1974 on November 9, 2006 declaring such a reassignment 'not in order' and granting my appeal for reinstatement.

"Subsequently, the Commission upheld its original decision in the face of the opposition mounted by the DPWH, by issuing succeeding and confirmatory Resolution Nos. 07-1472 and 08-0413 dated August 1, 2007 and January 28, 2008, respectively.

"Despite the clear, categorical directives from the Commission and in spite of all earnest efforts exerted by the undersigned, said CSC Resolution No. 06-1974 remained unimplemented as the DPWH failed and refused to implement the Resolution since the time it was issued.

"Finally, on August 3rd this year, the Commission promulgated CSC Resolution No. 09-1114 denying the final motion of the DPWH Secretary to 'defer the implementation of CSC Resolution No. 06-1974,' thereby ordering the respondent Secretary Ebdane, Jr. to explain why he should not be charged for indirect contempt.

"Following closely on the heels of this Resolution, the Honorable Court of Appeals, on August 25th this year, sustained the Commission's position by dismissing the petition for review of the Department of Public Works and Highways x x x.

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 Chief Personnel Specialist
 Commission Building & Labor Office

"PRAYER FOR JUST RELIEFS

"Given the facts of this case, Your Honors, may I now inquire about the entitlement to just reliefs by way of the payment of any and all back wages due me. A summary of the inclusive periods within which I was compelled by my distressing circumstances to file absences of leave from work is hereto attached as Annex 'B' for the Honorable Commission's reference.

"In sum, my appeal for the award of back wages is premised on the fact that I have been prevented from reporting to work on two (2) counts, namely:

- 1) From the time of my unconsented reassignment on October 24, 2004 to November 8, 2006, I have been constrained to file one leave of absence after another, due to the untold humiliation I suffered after facing evident diminution in rank from Assistant District Engineer to the more servile task of monitoring maintenance activities. This, coupled with the staggering consequences on my health and well-being rendered me virtually helpless and hapless.*
- 2) From November 9, 2006 until my actual reinstatement on November 25, 2009, I have likewise been compelled to take my leave from work without pay, due to the obstinate refusal to implement CSC Resolution No. 06-1974 through the prolonged and unfair use of delaying tactics. x x x.*

"As a result, I have sustained damages, particularly the total amount of salaries and other pecuniary benefits, which should have accrued to me had I not been the victim of arbitrary and unconsented reassignment and had CSC Resolution No. 06-1974 been enforced and implemented immediately.

"I humbly submit, therefore, that I cannot be faulted for my inability to work or to render any service. The policy of 'no work, no pay' cannot be applied in my case, for such distressing state of affairs was not of my own making or liking."

x x x



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SEYMOUR R. PAJARES
Chief Personnel Specialist
Commission on Government & Labor Office

Assuming cognizance over the present action, the Commission has directed the DPWH to submit its comment on the same. After an initial request for extension of time, the DPWH has thereupon adduced its comment. It reads, thus:

x x x

"The DPWH Management is firm on its stand that the reassignment of Ms. Deseo was done purely in the interest and as required by the exigency of the service, and not indiscriminately, capriciously or whimsically as viewed by her.

"We would like to reiterate that the appointment of Ms. Deseo as Engineer IV x x x is not station-specific. This means that her reassignment as Assistant District Engineer of Quezon 2nd DEO is just temporary and not permanent in nature, and that in the exigency of the service and in the sound discretion of the Head of Office she can be reassigned to other DEOs or offices under the DPWH where her services are deemed needed and necessary.


"We maintain our stand that the Deseo's case should have been decided based on the merits of the argument presented by both parties and not on the issue of technicality x x x.

"We should not be blamed for the late implementation of CSC Resolution No. 06-1974 for we have to exercise all the remedies available to us to stay the execution of the same, not to mention the supervening events which prevent the DPWH Secretary to enforce the execution sought by the Commission. Likewise, the DPWH Management should not be faulted for Ms. Deseo's filing of leave of absence for the same was her own doing. Should Ms. Deseo only follow the Orders reassigning her to other DEO/Office, pending action on our request for reconsideration of CSC Resolution No. 06-1974 and the eventual request for issuance of a temporary restraining order or injunction from the Court of Appeals to stay the implementation of said CSC Resolution, she should not have filed leave of absence after another as she represented just to show her continuous defiance of the aforementioned Orders of the DPWH Secretary."

x x x

For clarity, it may be necessary to look back into the salient facts of the case. Sometime in June 2003, Deseo was promoted as Engineer IV (Assistant District Engineer), under permanent status, which appointment was duly approved by the CSC-DPWH Field Office. More than a year later, then DPWH Acting Secretary Florante Soriquez, in a memorandum, directed Deseo to turn-over her position as Assistant

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District Engineer of the Quezon 2nd District Engineering Office to one Renato C. Alcala. In the same memorandum, Deseo was directed to report to the Office of the Regional Director, DPWH Regional Office No. IV-A, for her new assignment. In compliance therewith, the Regional Director ordered Deseo to report to his office for her work assignment.

Aggrieved by what happened, Deseo appealed her reassignment to DPWH Secretary Ebdane, who had, in the meantime, assumed the DPWH portfolio vice Acting Secretary Soriquez. Due to alleged inaction on her appeal, Deseo decided to bring her case to the Commission. Resolving her appeal, the Commission promulgated CSC Resolution No. 06-1974, dated November 9, 2006, where it declared Deseo's reassignment to be not in order.

Thereafter, there being no motion for reconsideration timely filed, Deseo moved for the execution of CSC Resolution No. 06-1974, dated November 9, 2006. The Commission granted execution in CSC Resolution No. 07-1472, dated August 1, 2007. Interestingly, it was only this time that Secretary Ebdane saw fit to move for reconsideration, impugning CSC Resolution No. 07-1472. This was denied in CSC Resolution No. 08-0143 dated January 28, 2008.

In April 2008, Deseo requested the Commission to implement, for being final and executory, the resolutions in her case, particularly CSC Resolution Nos. 06-1974 and 07-1472, which declared her reassignment to be not in order.

Acting thereon, the Commission issued CSC Resolution No. 08-1143, dated June 18, 2008, directing Secretary Ebdane to explain why he should not be held liable for contempt.

Responding thereto, Secretary Ebdane submitted an explanation, where he posited that he never deliberately disobeyed the questioned CSC resolutions. According to him, there was no positive or clear directive in the dispositive portion of CSC Resolution No. 06-1974 that he was supposed to enforce. He noted that the same resolution merely declared the reassignment of Deseo to be not in order.

Before the Commission could act on the said explanation, Secretary Ebdane interposed a motion, seeking for the clarification of CSC Resolution No. 06-1974.

Taking cognizance of Secretary Ebdane's motion, the Commission issued CSC Resolution No. 08-2255, dated December 8, 2008, where it clarified that CSC Resolution No. 06-1974 contemplated of the reinstatement of Deseo to her former post.

It appears that from CSC Resolution No. 08-2255, Secretary Ebdane commenced a petition for review before the Court of Appeals (CA). At the same time, he instituted before the Commission a motion for deferment. For her part, Deseo has manifested her desire that Secretary Ebdane be now cited in indirect contempt of the Commission. In

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CSC Resolution No. 09-1114 dated August 3, 2009, the Commission denied Secretary Ebdane's motion for deferment and instead, directed him to show cause why he should not be charged with indirect contempt.

Thereafter, the Commission promulgated CSC Resolution No. 10-0053 dated January 5, 2010, dismissing the contempt case against Secretary Ebdane given his supervening resignation from the service. However, the incumbent DPWH Secretary was directed to comply with the directive of the Commission.

Meantime, the CA has issued its decision, denying the petition for review of Secretary Ebdane.

Pointedly, in compliance with its long-standing obligation, the DPWH finally restored Deseo to her original workstation.

Nevertheless, discontented with the extent of relief afforded her, Deseo has instituted the present action, which shall be treated as a complaint.

The basic issue raised in this case is whether there is basis to authorize the payment to Deseo of back salaries and other benefits corresponding to the period she was constrained to go on leave of absence owing to the refusal of the DPWH to revert her to her original place of assignment.

Before proceeding to address the substantive merit of the case, the Commission would like to take exception from the comment of the DPWH. For the said agency to insist, even to this date, that the reassignment of Deseo was in accord with law and rules is totally uncalled for. Be it noted that no less than the Court of Appeals has sustained the previous finding of the Commission, invalidating or nullifying the said reassignment. Hence, there is no rhyme or reason why the DPWH should continue to posit its discredited view as regards the validity of Deseo's reassignment.

On the merits, it is worth stressing that a resolution of the Commission in an administrative case becomes executory once no motion for reconsideration has been interposed within the fifteen-day reglementary period. If such motion has been seasonably filed, the subject resolution shall be held in abeyance. In the event the motion for reconsideration is denied, the resolution is deemed enforceable. Its implementation shall not be put off by the mere pendency of a petition for review before the appellate court, unless the latter issues a restraining order or an injunctive writ.

In the herein case, it is noted that the appeal of Deseo assailing her reassignment was resolved by the Commission in her favor in 2006. After no motion for reconsideration was filed by the DPWH within the reglementary period, she moved for and was granted writ of execution by the Commission. Thus, at that point in time, the resolution of the Commission directing the restoration of Deseo to her original workstation was already executory. As a matter of fact, it was not just executory; it was

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also stamped with finality. The belated and futile motion for reconsideration of the DPWH followed by another motion for clarification did not alter the final and executory character of the resolution. The eventual filing by the DPWH of a petition for review before the Court of Appeals did not also undermine the enforceability of the resolution, there being no restraining order or writ of injunction issued.

Yet, despite its finality, the DPWH persistently refused to honor its legal obligation to effectuate the return of Deseo to her original station. It was only in October 2009 or after the lapse of more than three years from the time the reassignment was nullified that she was allowed to take back her post. Verily, the actuation of the DPWH towards Deseo unmistakably demonstrates lack of good faith. It manifests flagrant and wanton disregard of the basic principle in human relations that one should give another his rightful due and entitlement.

But does this entitle Deseo to the claim that she is presently pressing before the Commission?

Under the attendant circumstances of the case, the Commission answers in the affirmative. Undoubtedly, the DPWH committed what could basically be construed as constructive dismissal when it obdurately and obstinately defied the right of Deseo to be returned to her original place of assignment. As defined, a constructive dismissal is any action or a series of actions engendering hostile and distressing work environment that makes continuation in the office practically difficult and unbearable, if not impossible. For sure, the continued and persistent refusal of the DPWH to revert Deseo, despite clear and categorical declaration of her right to such reversion, made the workplace very distressing on her part. While she did not resign from her office, she, however, had to go on leave of absence several times to the point of exhausting all her leave credits, if only to escape the anxiety and anguish engendered by the blatant transgression of her right. That she herself applied for such leave of absence does not detract from the fact that this resulted from the wrong inflicted on her by the DPWH. Her taking of leave of absence was, in other words, invariably forced upon her by the prejudicial conduct exhibited by the DPWH.

Being the victim of a constructive dismissal, the Commission is of the considered view that Deseo can only be accorded the full measure of justice if she is restored all the monetary entitlements that she was deprived of during the period of her illegal reassignment. The only issue, however, is that she did not proffer documents detailing and proving what these entitlements are. For this reason, she is directed to itemize her claims and submit her supporting documents to be processed by the DPWH.

Additionally, the Commission feels that Deseo should be restored the leave credits that were exhausted in the wake of the unjustified refusal of the DPWH to return her to her former post, notwithstanding a final and executory resolution to that effect. In the same manner, the DPWH should also pay her back salaries for the period she was on leave without pay.



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WHEREFORE, foregoing premises considered, the complaint of Julieta A. Deseo is hereby given due course. She shall be paid all the monetary entitlements that she was deprived of during the period of her illegal and prolonged reassignment, subject to the submission or presentation of supporting documents or papers. She is likewise restored the leave credits she utilized because of the unjustified refusal of the Department of Public Works and Highways to effect her reversion to her original workstation. Further, she is entitled to the payment of back salaries for the period she was on leave without pay.


Quezon City.


FRANCISCO T. DUQUE III
Chairman

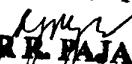

CESAR D. BUENAFLOR
Commissioner


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
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